

Article 16. Board of Zoning Appeals.

16-1601 The Board of Zoning Appeals of the City of Gardner, Kansas, is hereby continued in accordance with the provisions of K.S.A. 12-714 and amendments thereof relating to the creation of the Board of Zoning Appeals, and the provisions of K.S.A. 12-715 and amendments thereof authorizing said Board to administer the details of the application of this Ordinance and making regulations in accordance with the general rules set forth in said Zoning Ordinance, including the power to hear and determine appeals to permit exceptions to, or variations from, the zoning regulations in the classes of cases or situations and in accordance with the purpose, conditions, and procedure specified by the Governing Body of the City of Gardner, Kansas, as authorized in K.S.A. 12-715 and amendments thereof; provided that the word "Board" when used in the Ordinance shall be construed to mean the Board of Zoning Appeals.

1601.1 DEFINITIONS: (as defined herein)

- A. Appellant - shall refer to any person, firm, partnership, corporation or other business organization, public official, head of any administrative department, or member of any public board which appeals a decision of the Codes Administrator or any public official of the City of Gardner.
- B. Applicant - shall mean any person, firm, partnership, corporation or other business organization which applies to the Board for a variance or exception.
- C. Exception - shall mean a permission given by The Board, properly authorized by this Ordinance and amendments thereto, for an applicant to use his/her property in a manner contrary to the provisions of this Ordinance and amendments thereto, provided such use subserves the general welfare and protects community interests.
- D. Variance - shall mean an authorization by the Board granting relief to an applicant in the use of an applicant's property, where, owing to special conditions, a literal enforcement of the provisions of this Ordinance and amendments thereto will result in unnecessary hardship to the applicant.

1601.2 MEMBERSHIP, TERM, COMPENSATION, RULES OF PROCEDURE, AND MEETING OF THE BOARD OF ZONING APPEALS

- A. Membership - The Board shall consist of five (5) members, all of whom shall be taxpayers and residents of the City of Gardner, Kansas, who will serve at the appointment of the Mayor by and with the consent of the Governing Body provided that a member may be removed by the Mayor with the consent of the Governing Body, said consent to be given by resolution of the Governing Body for cause upon written charges filed with the Secretary of the Board; provided that no removal shall occur until after a public hearing is held to consider the written charges.
- B. Term - A member shall be appointed to serve a term of three (3) years on the Board from the date of his/her appointment, except where a member is appointed to serve the unexpired term of a vacated membership, in which event the member shall serve for the balance of the unexpired term; provided that Board members serving on the date of enactment of this Ordinance will continue to

serve until the expiration of the term for which said members have been appointed.

- C. Officers: The members of the Board shall elect from their membership a chairman and shall appoint a Secretary, each of whom shall serve for a term of one year from the date of their election or appointment by the Board.
- D. Compensation - All members of the Board shall serve without compensation.
- E. Rules of Procedure - The Board shall adopt rules of procedure in accordance with the authority conferred by K.S.A. 12-714 (L. 1965, Ch. 97, Section 4; June 30.) and amendments thereof.
- F. Meetings - Meetings of the Board shall be held at the call of the Chairman; provided that whenever three (3) or more members of the Board request the Chairman to summon a meeting of the Board, the Chairman shall call a meeting; provided further that the Secretary of the Board shall keep minutes of its proceedings and official actions, and shall keep records of its examinations and findings, and shall file the same in the office of the Board or such other public place within the City where public records are filed, provided further that the presence of four (4) members of the Board shall constitute a quorum for transacting business and taking official action; provided further that the concurring vote of at least four (4) members of the Board shall be necessary to affect a ruling of the Board.

1601.3 BOARD OF ZONING APPEALS; POWERS AND DUTIES; APPEALS; VARIANCES AND EXCEPTIONS.

The Board of Zoning Appeals shall administer the details of appeals from or other matters referred to it regarding the application of this Ordinance and amendments thereto, including the power to hear and determine appeals to grant variances and exceptions to this Ordinance and amendments thereto, as hereinafter provided.

Appeals to the Board may be taken by any person aggrieved, or by any officer of the City, or any governmental agency, or body affected by any decision of the officer administering the provisions of this Ordinance and amendments thereto. The Board shall have power to hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of said Zoning Ordinance. Such appeals shall be filed with the Secretary of the Board within thirty (30) days from the date of the decision of the officer administering the said Zoning Ordinance, which decision is appealed, and such appeal shall specify in writing the grounds for the appeal; provided that, notice of said appeal shall be served upon the person whose decision is being appealed by providing said person with a copy of the appeal; provided further that, when the officer is notified that his/her decision is being appealed, said officer shall forthwith transmit to the Secretary of the Board a transcript of all proceedings from which the appeal is taken; provided further that an appellant, upon filing an appeal with the Secretary of the Board, shall pay a fee in an amount as established by the Governing Body by Resolution.

Any person may apply to the Board for variances and exceptions to the Ordinance and amendments thereto upon payment to the Secretary of the

Board of a fee in an amount as established by the Governing Body by Resolution. The Board may grant variances and exceptions to this Ordinance and amendments thereto in the manner hereinafter provided. (Ord. 2019, Sec. 1)

- A. Variance - The Board may grant a variance from the specific terms of the said Zoning Ordinance and amendments thereto which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship for the applicant and provided that the spirit of the said Zoning Ordinance and amendments thereto shall be observed, the public safety and welfare secured, and substantial justice done for the applicant. Such variance shall not permit any use not permitted by the said Zoning Ordinance and amendments thereto in such district. An application for a variance may be granted upon a finding by the Board that all of the following conditions have been met:
 - 1. That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant;
 - 2. That the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
 - 3. That the strict application of the provisions of the Zoning Ordinance or which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
 - 4. That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
 - 5. That the granting of the variance desired will not be opposed to the general spirit and intent of the Zoning Ordinance.
- B. Exceptions - The Board may grant exceptions to the provisions of this Ordinance and amendments thereto when the Board is specifically authorized to grant such exceptions by the terms of the said Zoning Ordinance and any amendments thereto. In no event shall exceptions to the provisions of the said Zoning Ordinance and any amendments thereto be granted when the use or exception contemplated is not specifically listed as an exception in the Zoning Ordinance. Further, the Board shall not have the power to grant an exception when the conditions of such an exception as established by the Governing Body in this Ordinance and amendments thereto are not found to be present.

Any person, official, or governmental agency dissatisfied with any order or determination of said Board may bring an action in the District Court of Johnson County, Kansas, to determine the reasonableness of any such order or determination.

- 1601.4 HEARING BEFORE BOARD OF ZONING APPEALS. An appellant or applicant shall mail on or before ten (10) days from the date of hearing set for an appeal or application, a copy of the same to the owners of record of all real property located within or without the corporate limits of the City and lying within two hundred (200) feet of the boundaries of the property which is the subject of the appeal; provided that such notice shall be mailed certified mail, return receipt requested, postage prepaid in the United States mail; provided further that proof of mailing and return receipts as requested shall be filed under oath by the appellant or applicant with the Secretary of the Board five (5) days prior to the date of hearing set for an appeal or application.
- 1601.5 PLAT TO BE FILED WITH SECRETARY OF BOARD. The appellant or applicant shall file with the secretary of the Board on or before ten (10) days prior to the date of hearing set for an appeal or application, a plat of the land which is the subject of said appeal or application, said plat being drawn to scale and showing the ownership of all real estate lying within two hundred (200) feet from the boundaries of appellant's or applicant's real property; provided that an appellant or applicant shall show on said plat the location of all present and proposed improvements relating to appellant's or applicant's real property.
- 1601.6 TIME FOR HEARING AN APPEAL OR APPLICATION. When an appeal or application has been filed with the Secretary of the Board, said Secretary shall notify the Chairman who will call a meeting of the Board; provided that notice of the time, place, and subject of the hearing shall be published in the official newspaper of the City of Gardner, Kansas, once on a date not less than twenty (20) days prior to the date set for the hearing; provided further that a copy of said publication notice shall be mailed to each party to the appeal within seven (7) days from the date of publication.